

Southern Railway System

*Law Department
P.O. Box 1808
Washington, D.C. 20013
(202) 383-4000*

EPA Region 5 Records Ctr.



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February 5, 1982 se My Direct Line Is: 383-4428
19354

Robert J. Dacey
Colonel, CE
District Engineer
Department of the Army
St. Louis District, Corps of Engineers
210 Tucker Blvd. North
St. Louis, Missouri 63101

Dear Colonel Dacey:

This refers to your letter of January 21, 1981, to Southern Railway Company (referred to hereinafter as "Southern") concerning the recent discovery of some waste drums buried on the bank of the Mississippi River on property owned by Southern in East St. Louis, Illinois. You have directed Southern, pursuant to the Refuse Act, 33 U.S.C. Section 407, to discontinue immediately any dumping at the site and to remove the refuse materials from the river bank.

With all due respect, Southern contends that it has no statutory liability with respect to these drums, including any liability under the cited provision of the Refuse Act. That Act, as interpreted by the courts, applies only to situations where the charged party actually deposited the refuse material itself. Here, Southern neither caused nor permitted the waste drums to be buried on the river bank and had no knowledge of them until the Illinois Environmental Protection Agency (Illinois EPA) representative happened to come across several partially exposed drums. Since Southern is simply the landowner and has never operated a facility at the site, obviously some unknown third party and not Southern buried the drums at this location. Southern is not now and has never deposited any refuse at this site.

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E.P.A. - D.C.
STATE OF ILLINOIS

Jim v. 11-2
2. St. Louis / So. R.R.
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~~Bill C. Hild~~
~~Bill Solomon~~
FYI
Copy Tim G.

Although Southern contends it has no liability in this matter, Southern has offered, by the attached letter to the Illinois EPA, to undertake removal of the drums if that agency agrees to Southern's three-phase removal operation. Once the Illinois EPA approves Southern's plan, Southern will implement the plan as soon as possible, weather and water conditions permitting.

On January 29, I met with Mr. Ron Messerli of the Corps' Operations and Permits Section. He indicated that the Corps' sole interest here was the removal of the drums and that, once they were removed, the Corps would administratively close the matter without further proceeding, subject to final Corps' inspection of the site. We hope the matter can be resolved in this manner without litigation.

Sincerely,

A. Gayle Jordan
General Attorney
Southern Railway Company

Attachment

cc: Mr. Dave Beano
U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Ill. 60604

→ Illinois Environmental Protection Agency
220 Churchill Road
Springfield, Ill. 62706

A. Gayle Jordan
Tom Cavanagh

Mr. Kenneth G. Mensing
Southern Region Manager
Land Field Operations Section
Illinois Environmental Protection Agency
113 Main St.
Collinsville, Illinois 62234

Mr. Joseph Janeczek
U.S. Fish and Wildlife Service
250 West Cherry Street
Carbondale, Illinois 62901

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